

Sample letter sent to Tribal leaders

SEP 25 2013

**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

Federal Communications Commission  
 Office of the Secretary

June 25, 2013

RE: Recent developments at the FCC intended to facilitate the deployment of broadband, broadcast, and telephony on Tribal lands

I extend to you respectful greetings on behalf of the Office of Native Affairs and Policy (ONAP) of the Federal Communications Commission (FCC or Commission). As ONAP's Chief, my purpose with this letter is to make you aware of regulatory priorities of impact and multiple opportunities for your Tribal Nation at the FCC. Recent developments at the Commission involve new rules and mechanisms intended to facilitate the deployment of broadband, broadcast, and telephony on Tribal lands. In the area of cultural preservation, I want to make you aware of positive train control (PTC) as an immediate issue at the FCC. I invite you and your Tribal Nation to engage in a consultative and interactive dialogue on the priorities that you find important. I also invite your suggestions on how the FCC can most effectively and appropriately engage Tribal Nations on these and other important matters in the current atmosphere of severe budget constraints, consistent with our government-to-government relationship and trust responsibility. We wish our regulatory and policy making efforts to be informed by the needs and values of your Tribal Nation.

By way of background, ONAP was created in 2010 by a unanimous vote of the Commission to develop and drive an FCC-wide Tribal agenda, and we work extensively across the FCC on matters involving the interests of Tribal Nations and Native communities. ONAP's personnel has extensive communications backgrounds and experience working with Tribal Nations on communications matters. When an external regulatory priority arises, ONAP coordinates with the relevant Bureau or Office to assist them in their consultation and work with Tribal Nations. ONAP works on an individual basis with a great many Tribal Nations throughout the country on their own communications priorities, addressing issues involving multiple types of communications platforms. ONAP also holds regional consultation and training sessions for Tribal Nations, drawing on expertise throughout the Commission on many regulatory proceedings and mechanisms under the Commission's authority.

In order to inform you on the full array of issues at the FCC, I draw your attention to ONAP's 2012 Annual Report, which we formally presented to the FCC Chairman and Commissioners on March 20, 2013. Reading this report will familiarize you with the Commission and its many efforts with Tribal Nations. The report can be found on the FCC's website at <http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf>. The news release accompanying the report can be found at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-319691A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319691A1.pdf). The report is also available at <http://www.fcc.gov/topic/native-nations>.

On page 3 of the ONAP 2012 Annual Report, we list the Commission's Tribal consultation and coordination priorities for 2013, which include: (1) the Tribal Mobility Fund; (2) the Tribal government engagement obligation; (3) the Spectrum over Tribal Lands Notice of Proposed Rulemaking; (4) the cultural preservation review of non-compliant towers; (5) eligible telecommunications carrier designation petitions to serve Tribal lands; and (6) the radio broadcast Tribal Priority. The Report then provides

background on the FCC's past work with Tribal Nations and an overview of the seminal issues involving the lack of communications services that confront Indian Country. The Report then provides an overview of the Commission's creation of ONAP and its renewed regulatory agenda, as well as its renewed commitment to Tribal consultation, outreach, and training efforts. The rest of the Report ties all of the preceding sections together by illustrating the real world impact of the Commission's policies in Indian Country. Six different case studies involving the actual experiences of five individual Tribal Nations and one of our regional consultation and training sessions, attended by many Tribes, illuminate the work of ONAP and the FCC with Tribal Nations and Native communities in 2012.

In the area of immediate opportunities for Tribal lands, the Mobility Fund was created as part of the new Connect America Fund, and provides significant universal service subsidy amounts, including set-asides, that are aimed to foster deployment of wireless services on Tribal lands. Under the Commission's new Tribal government engagement obligation rules, universal service supported communications companies are also now required to engage with Tribal Nations on a number of issues relevant to deployment on their lands. ONAP is also actively engaged in the FCC's work with Tribal Nations on the process for considering effects on Tribal traditional cultural properties under Section 106 of the National Historic Preservation Act. In this arena, in particular, the FCC has an immediate Tribal coordination priority – positive train control – a Congressionally-mandated communications program designed to save lives and enhance safety and security along the nation's railroad lines by the use of wireless communications technology.

In the area of wireless broadband, the Commission will hold Tribal Mobility Fund Auction 902 later this fall, in which \$50 million in support subsidies will be distributed via reverse auction to winning carriers committing to deploy 3<sup>rd</sup> generation or better wireless broadband services on Tribal lands. Together with Auction 901, which was held last October, this constitutes Phase I of the Mobility Fund. Auction 901 awarded \$300 million via reverse auction, \$22 million of which was awarded to carriers serving Tribal lands. The Commission has proposed that Phase II of the Mobility Fund will provide ongoing, recurring support amounts over the next ten years with higher proposed budgets of \$500 million per year, of which up to \$100 million will be set aside and designated annually for Tribal Mobility Fund Phase II. Carriers serving Tribal lands will be eligible for both Mobility Fund and Tribal Mobility Fund auction support amounts; however, only those serving Tribal lands will be eligible for the Tribal Mobility Fund auctions. The rules for Phase II of the Mobility Fund and the Tribal Mobility Fund are not yet final.

In the arena of media ownership and radio broadcasting, new Tribal Priority licensing rules provide important opportunities for Tribal Nations to become radio broadcast licensees in both the full power commercial FM service and the non-commercial educational services. The Commission's rules provide Tribal Nations and their Tribal entities an opportunity to file for a full power commercial FM allotment at any time, significantly reducing the potential cost of obtaining such a valuable broadcast license. In October of this year, the Commission will open a licensing application window for Low Power FM (LPFM) applications. This will be the first such LPFM licensing window in over a decade, and the first to utilize the Tribal Priority rules for this type of very localized non-commercial license.

As noted above, our immediate priority in the area of Section 106 and preservation of Tribal traditional cultural properties is positive train control, or PTC. In order to meet the statutory deadline of positive train control, the railroads have indicated that they need to begin widespread construction of their PTC systems no later than spring 2014. On positive train control and other Section 106 issues, ONAP coordinates closely with other Bureaus and Offices as a part of the Commission's Infrastructure Team. Attached to this letter is a copy of correspondence, highlighting four separate initiatives in the area of Section 106 reviews, that ONAP and the FCC's Infrastructure Team are sending to the Tribal Historic Preservation Officer (THPO) or cultural preservation official of your Tribal Nation. These four initiatives are positive train control, distributed antenna systems, the review of non-compliant towers, and the use of

the FCC's Tower Construction Notification System by other federal agencies. As the attached letter is being sent at the same time as this letter to you, please review both this letter and its attachment. Please also alert your THPO or cultural preservation official of the opportunity to engage with the FCC on these issues, and the timeliness of positive train control.

Within the next few weeks, we expect to send to your Tribal Nation a scoping document regarding Section 106 review for positive train control. It is important to note that, while we are in the early stages of developing solutions, we intend to move forward deliberately and appropriately. Our intent is that this early engagement will lead, in a very timely and appropriate fashion, to productive Tribal consultation on shared solutions that meet the obligations of the FCC to Tribal Nations, the needs of Tribal Nations, and compliance with federal law and policy. Our goal is to increase efficiency and reduce burdens while preserving and improving opportunities for all parties, and particularly Tribal Nations, to ensure consideration of effects on cultural properties. Improved processes will also help advance modern communications infrastructure for public safety, business, government, and personal communications.

Please look upon ONAP as a partner and a resource for you at the Commission. Please do not hesitate to contact me on any or all of these important matters as soon as possible if you have any questions, suggestions, comments, or concerns. You may reach me directly at 202-418-3629 or [geoffrey.blackwell@fcc.gov](mailto:geoffrey.blackwell@fcc.gov). You may also directly contact ONAP's Deputy Chief, Irene Flannery, at [irene.flannery@fcc.gov](mailto:irene.flannery@fcc.gov) or 202-418-1307. In addition, ONAP's main contact email is [native@fcc.gov](mailto:native@fcc.gov), and ONAP's main telephone number is 202-418-2930. In the coming weeks, we will schedule and invite your participation in dialogue sessions on these important issues. We value your opinion and seek your assistance in these important matters.

Mvto (Thank you) and Sincerely,

Geoffrey C. Blackwell, Chief  
Office of Native Affairs & Policy  
Consumer & Governmental Affairs Bureau

Attachments: Sample letter to Tribal Historic Preservation Officers or Cultural Preservation Officials (dated June 25, 2013)  
Positive Train Control Fact Sheet for Tribal Nations (dated June 25, 2013)  
Photo Sheet with Sample PTC Configurations